IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.46091 of 2002
and
W.P.M.P.No.30655 of 2004

1.L.Kannappan
2.L.Thirunavukarasu ... Petitioners

Vs.

1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
Revenue Department,
Fort St.George, Chennai-9.

2.The Principal Commissioner &
Commissioner of Land Reforms,
Chepauk, Chennai-5.

3.The Assistant Commissioner/
Competent Authority,
Urban Land Ceiling,
(Tambaram), 61, Sannadhi Street,
Alandur, Chennai-88. ... Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : M/s.V.Ramesh
For respondents : Mr.C.Thirumaran, G.A.

* * *

O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondents especially the order of the third respondent, dated 05.09.1997, vide ref.Na.Ka.Si.Pa 17/95 B and 24.11.1998, vide Ref.SR.17/95C in so far as the petitioners land in Survey No.9/2C2 of Tambaram Village measuring 1750 Sq.mts. is concerned, and quash the same and further direct the respondents to treat the land as falling outside the Provisions of the Act 24/78 by virtue of Section 4 of Act

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20 of 1999.

2.Heard the learned counsel for the petitioner as well as for the respondents.

3.The brief facts of the case, as stated by the petitioner, are as follows:-

The petitioners are minors who are represented by their father P.Lingan. P.Lingan had purchased agricultural lands in the name of the petitioners comprised in Survey No.9/2 C of Tambaram Village measuring about 43 1/2 cents by a Sale Deed, dated 20.08.1997, vide Document No.3603/97. After the property had been purchased, he has been cultivating the land and even now the character of the land had not been changed. The fact that the land is an agricultural land is evident from the payment of Land Revenue (Kist) by P.Lingan, on 01.09.1997. He has also obtained patta in the name of the petitioners, on 29.08.1997. While so, proceedings had been initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in the name of Dr.N.Sivasamy, who was holding lands in several Survey Numbers of Tambaram Village measuring 11450 sq.mts. Apart from the extent of lands referred to above, about 3.33 acres in Survey No. 60/1 was excluded as agricultural land. It appears that proceedings continued in the name of Dr.N.Sivasamy, without even proper service of notice on him. An order appears to have been passed, under Section 9 (5) of the Act, declaring an extent of 10,950 sq.mts. as excess vacant land. When the petitioner visited the office of the Village, Administrative Officer, during the month of October,2002, for payment of Kist and for obtaining Adangal Extract, the Village Administrative Officer had refused to issue the same on the ground that the lands have been acquired under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 and he has been advised to contact the office of the third respondent for further action. On verification with the third respondent it was found that the lands of the petitioners, along with other lands, have been acquired in the name of Dr.N.Sivasamy. Therefore, the petitioners had applied for the certified copies of the various orders passed under Sections 9(5) and 11(5) of the said Act. The certified copies under Section 9(5) and 11 (5) alone were furnished and the same have been challenged in the present writ petition.

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4.It is contended that agricultural lands cannot be acquired and the same are excluded from the provisions of the Act under Section 3 (o) and 3 (p). The fact that the petitioners lands were agricultural lands is seen from the recitals contained in the Sale Deed and from the receipt for payment of Kist and from other revenue records. The order of the Competent Authority refers to inspection of lands by him and he has dealt with the lands in different Survey Numbers. The land in Survey No. 60/1 was excluded from acquisition on the ground that it was agricultural land. Whereas, with regard to the land in Survey

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No.9/2C2, belonging to the petitioner, the order was silent. Nothing is mentioned about the character of the said land. However, this land has been excluded in the order of the third respondent, as if it is an urban land. It is seen from the records that various notices, under different provisions of the Act, have been served by affixture by erecting a stick on the land. Such a service of notice by the third respondent is not in accordance with the rules, as the rules applicable to such proceedings contemplates 'service of notice' and 'orders' by registered post with acknowledgment due. Violation of such mandatory provisions, with regard to the service of notice, is fatal to the acquisition proceedings. Since the notices under various provisions of the Act were not served properly on the land owner and on the persons interested in the land, there were no objections raised with regard to the acquisitions. Even in the absence of such objections, it is incumbent on the part of the third respondent to make a thorough inquiry and acquire the land, if it is urban land, in excess of the ceiling limit. As already stated, notice under Section 11(5) was not served on the petitioners 'as an interested person' or on the erstwhile land owner. Section 11(5) contemplates surrender of excess vacant land voluntarily by the land owner within 30 days of the service of notice. The fact that the petitioners are in possession and enjoyment of the said land is reflected in the revenue records. Therefore, it is clear that the third respondent had not taken possession of the land and the land continues to be with the petitioners. Under such circumstances, all proceedings shall abate under Section 4 of Act 20 of 1999. Any claim by the respondents that the petitioners were deprived of possession by the respondents would be merely on paper whereas, actual physical possession is still with the petitioners. The third respondent had not drawn up any Memorandum or Panchanama before divesting the petitioners' right, title and possession. Therefore, all proceedings shall abate under Section 4 of Act 20 of 1999.

5.From the adangal extract for Fasali 1385 to 1399, dated 17.12.1989, and in the Sale Deed, dated 20.08.1997, executed by Dr.N.Sivasamy, in favour of the petitioners, it is seen that the lands in question have been described as agricultural lands. In the patta issued, on 29.08.1997, and in the Kist receipt, dated 01.09.1997, the petitioners names are entered as the owners of the land. However, it is seen that the order passed by the third respondent, under Section 9(5), on 05.09.1997, is in the name of Dr.N.Sivasamy and it is also found that since the owners of the lands in question had refused to receive the Section 9(1) and (9)4 report and notice, it had been served by sticking it on a stick and placing it on the land concerned. Such notice is stated to be not in accordance with the provisions of law relating to service of notice. In the notice of the third respondent, dated 24.11.1998, issued under Section 11(5), it is seen that it had been sent only in the name of Dr.N.Sivasamy of Tambaram and in the adangal extract, dated 27.11.2002, for Faslis 1411

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and 1412, the name of P.Lingan has been entered. It is stated that the lands are under cultivation. Therefore, from the above facts, it is clear that even though the proceedings have been initiated under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, it has been proceeded with against Dr.N.Sivasamy of Tambaram and not against the petitioners who were said to be in the possession of the land in question. Further, it is also seen, from the relevant revenue records, that the names of the petitioners have been entered therein. Further, the provisions of law relating to service of notice, under the said Act, has not been followed. There is nothing shown by the learned Government Advocate appearing on behalf of the respondents, contrary to the contentions raised on behalf of the petitioners.

6. Further, the learned counsel appearing on behalf of the petitioners has relied on the following decisions :-

6.1. In M/s.Vijay Foundation (P) Ltd. rep.by its Director, R.Thiagarajan Vs The Principal Commissioner and Commissioner of Land Reforms, Chepauk, Chennai, reported in 2006-4-L.W,159, a learned Judge of this Court, while dealing with the action initiated by the respondents under the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, in view of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act (Act 20 of 1999), has held that the respondents had initiated acquisition proceedings against the person who was not the owner of the lands. As the mandatory conditions mentioned in Sections 7 to 12 of the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, were not followed by the respondents, the alleged possession taken by the respondents was vitiated. Based on the proceedings initiated against the wrong person, the lands of the petitioner cannot be acquired by the respondents. Since the possession of the land is with the petitioner ever since the date of purchase and as the the Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978, was repealed on 16.06.1999; it was not open to the respondents to proceed against the petitioner."

6.2. In Sosamma Thampy Vs. The Assistant Commissioner (ULT)-cum-Competent Authority (ULC) and others, reported in (2006) 2 M.L.J. 664 , M/s.Anees Leathers Manufacturers rep.by its proprietor Mr.Anees Ahamed Vs The Government of Tamil Nadu rep.by its Secretary, Revenue Department, Fort St.George, Chennai and others, reported in 2006-3-L.W.437, and Jayaseelan & Ratnaseelan Vs The Government of Tamil Nadu rep.by its Secretary, Revenue Department, Fort St.George, Chennai and others, reported in 2006-3-L.W.440, this Court, while dealing with the effect of the provisions of the Tamil Nadu Urban Land Ceiling Repeal Act (Act 20 of 1999) on the land acquisition proceedings initiated under the Tamil Nadu Urban Land (Ceiling and Regulation), Act 1978, has held that all such proceedings initiated under the Act of 1978, would abate on the coming into force of the Tamil Nadu Urban Land (Ceiling and Regulation) Repeal Act, 1999, if the possession of the land had not been taken by the authorities concerned prior to the repeal , and if due compensation had not been paid to the petitioners.

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7.Based on the above decisions and on the submissions made by the learned counsels appearing for the petitioners as well as for the respondents and on a perusal of the records available before this Court, it is clear that the land acquisition proceedings initiated by the respondents and challenged before this Court cannot be sustained in view of the subsequent coming into force of the Repeal Act (Act 20 of 1999). In such circumstances, the proceedings initiated against the lands in question stands abated in view of Section 4 of Act 20 of 1999 and therefore, the writ petition stands allowed. Consequently, the connected W.P.M.P. is closed. No costs.

Sd/
Asst. Registrar

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Sub Asst.Registrar

To

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